the check was drawn. *First National Bank* v. *Whitman*, 94 U. S. 343. The debt has not been extinguished but merely suspended, and the depositor must take his dividend with the other creditors. The courts, however, do not seem to favor this result and have escaped it by raising the doctrine of equitable assignment or equitable lien. An agreement between the depositor and the collecting bank is implied to the effect that the depositor shall have an equitable lien on the deposit in the second bank. The nature of this lien seems to be either that the collecting bank declares itself a trustee of the debt due from the drawee bank, or that there is a partial assignment of this debt. Undoubtedly such a transaction is possible, and would attain the desired result, but it seems that such an agreement is a fiction. If made in contemplation of bankruptcy it would probably be void as against creditors, and if made in the ordinary course of business can hardly be implied by the mere giving of a check. Nevertheless the depositor has been preferred on this ground. *Fourth St. National Bank* v. *Yardley*, 165 U. S. 634.

A recent case on this point, decided in the U. S. Circuit Court of Pennsylvania is *National Union Bank* v. *Earle*, New York Law Journal, April 19, 1899. The plaintiff employed the defendant to collect a note, and received in payment a check against a second bank. This check was collected, but owing to a rule of the Clearing House the plaintiff repaid the money to the drawee bank, which paid it to the defendant. The plaintiff was allowed to recover the money from the defendant as a preferred creditor. The court placed its decision on two grounds, first, that there had been an equitable assignment; and secondly, that the rule of the Clearing House was not intended to have the same effect as if the check had never been collected, but merely to put the money in a safe place until it should appear who was best entitled to it. On this interpretation of the facts the case is undoubtedly correct, for the plaintiff had merely to prove his good faith to become entitled to the money. On the payment of the check he was no longer a creditor of defendant, and the money, having returned to the latter without any right in him to call for it, was held in trust for the person best entitled. The case is also interesting as showing a decided approval of the doctrine of equitable assignment, — which, though open to criticism for the reasons given above, seems to be fairly settled.

JUDICIAL INITIATIVE. — The power of a trial justice to influence a jury is a dangerous one, — when, either consciously or unconsciously, he so conducts himself as to influence the result of the trial, to lead the jury to a conclusion, there is strong reason for holding that a new trial should be allowed. In *Bolte* v. *Third Ave. Ry. Co.*, 56 N. Y. Supp. 1038 (Sup. Ct., App. Div., First Dept.), this was the actual course adopted. The action was brought for personal injuries sustained by the plaintiff through carelessness of defendant's servants. During the proceedings the trial justice took it upon himself to develop the plaintiff's case by asking his witnesses many questions which would have been objectionable if asked by the counsel for the plaintiff. The defendant's exceptions were overruled and judgment was given for the plaintiff. On appeal, the court above not only reversed the order, but further said that even if no exception had been taken, the mere fact of the extreme exercise of judicial power in taking such initiative would have been sufficient to warrant reversal.

In any trial before a jury, it is not required that the judge should be a mere presiding officer. As a matter of necessity he has certain discretionary powers whereby he may aid in bringing about speedy and accurate results. In him is vested an initiative which allows him, if necessary, to clear up, by means of judicious questioning, points of fact for presentation to the jury. Just how far a justice may thus actively interpose in the conduct of a trial cannot be determined by hard and fast rules. To bind him too closely is as fatal to beneficial results as to recognize no limits whatever to his power of initiative. It is, therefore, a question of degree upon which jurisdictions differ. The English practice allows the court considerable freedom, while some of our States closely restrict it, both as to summing up and also as to commenting on evidence during the trial.

It is clear, however, that a higher court must always have the power to prevent a straining of this initiative. In the principal case the facts undoubtedly show an extreme use of this discretionary power; for whatever may be its limits, it cannot be said to extend so far as to allow the Court to supplant the counsel for either side in the development of the case for the jury. *Wheeler* v. *Wallace*, 19 N. W. Rep. 33 (Mich.), recognizes such abuse of judicial discretion as a cogent reason for granting relief by a court of review. And a more recent case, *Dunn* v. *People*, 50 N. E. Rep. 137 (Ill.), objects in definite terms to examination of witnesses by the Court in criminal trials as prejudicial to fair results. The Court, therefore, in the present instance reaches a sound and just conclusion in holding this action reversible error.

PRIVILEGE OF WITNESSES WHO ARE PARTIES TO THE SUIT. — It seems to be an unsettled point in the law of evidence at the present time, as to just what is the effect of a claim of privilege by a party to the suit who has put himself on the stand as a witness in his own favor. Does he waive all his privileges by offering to testify, or, if not, can inferences be drawn against his case from his refusal to give all the evidence in his power? In the ordinary case, if a party to the suit can be shown to have withheld evidence of any sort bearing on the merits of the case without any excuse for its non-production, this is allowed to count heavily against him. *Wylde* v. *Northern R. R. Co.*, 53 N. Y. 156. But if he refuses to give further evidence on the ground of privilege, though logically there is a strong probability that he is keeping back the evidence because he knows that it would be harmful to his case, still on theoretical grounds this should cause no inferences to be drawn, for otherwise the privilege becomes a mere nullity. Indeed, this seems to have been the fundamental idea of a privilege, that the claim of it was perfectly proper and could never be used against the witness. *Rose* v. *Blakemore*, Ryan & Moody, 382.

From this point of view a recent Massachusetts case seems logically indefensible. The defendant called as a witness a former attorney of the plaintiff, and asked him as to certain confidential communications made to him by the plaintiff. On the claim of privilege by the attorney conducting his case, the court ruled that the plaintiff in person must assert or waive his privilege, and take the responsibility of it on himself. To avoid the inference that he was withholding evidence which might hurt his case, the plaintiff then waived his privilege, but took exceptions to the